IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12511 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT GAS FINANCIAL SERVICESLTD. - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 4.
RULE SERVED BY DS for Respondent(s) : 1 - 4.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 20/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.Present is a writ under Article 226 of the Constitution of India, wherein, order dated 31.3.2004, passed by the

Assessing Officer, making an order of assessment and the order dated 18.8.2004 passed by the Assessing Officer rejecting the petitioner's rectification application are under challenge. The facts in short for disposal of the writ application are that the petitioner is a lessor for giving pipeline and connection to the consumer for realization of gas. On an earlier occasion, a dispute arose between the assessee and the Assessing Officer that the activities of the petitioner would attract provisions of the Sales Tax Act or not, the matter went up to the Tribunal and relying upon the terms/covenants contained in the lease deed, the Tribunal held that the tax is not leviable.

2. The petitioner submits that relying upon the said judgment of the Tribunal inter-parties, he did not realize the tax. At the time of the assessment, according to the petitioner, an issue was pointedly raised and the Assessing Officer proposed an order in favour of the petitioner and also ordered refund, but in accordance with certain practice followed in the department, the matter was sent to the Deputy Commissioner of Sales Tax, for proper appreciation known as pre-audit. The Deputy Commissioner did not agree with the proposed order of the Assessing Officer

and asked the Assessing Officer to reject the application and issue demand for recovery of the tax. The petitioner thereafter submitted an application under Section 72 of the Gujarat Sales Tax Act for rectification of the order passed against his interest. According to the petitioner, this time again, the Assessing Officer proposed the order in favour of the petitioner, but again referred the matter to the Deputy Commissioner of Sales Tax for pre-audit. According to the petitioner, this time again, the Deputy Commissioner rejected the proposal and asked the Assessing Officer to reject the rectification application. Accordingly, by order dated 18.8.2004 at Annexure:H, the order was passed and the application for rectification was rejected. Being aggrieved by the said orders, directing issuance of the demand and dismissal of the rectification application, the petitioner is before this Court. Mr. Tanvish U. Bhatt, learned counsel for the petitioner submits that the Assessing Officer, so also the pre-audit authority were obliged to look into the legal position as settled by the Tribunal inter-parties and in any case, before passing any order against the interest of the petitioner, pre-audit authority was obliged and duty-

bound to observe the principles of natural justice by issuing a notice for hearing. In support of his submission, he has placed reliance upon the unreported judgment of this Court in the matter of **A.K. Patel & Co. (Construction) Pvt.Ltd., Vs. State of Gujarat [Special Civil Application No. 10068 of 2004 decided on 29.9.2004].**

3. Mr. Gori, learned AGP for the State, though opposed the writ application on merits, but after going through the said judgment of the Division Bench in the matter of A.K. Patel & Company (supra) was unable to dispute the legalities any further. The Division Bench in the matter of A.K. Patel & Company (supra) has observed in para-11 as under:-

> "11. In our opinion, without assigning any reason or without hearing the petitioner, it was not proper on the part of the respondent authorities to reject the rectification application, whereby the petitioner had prayed that credit of the amount of tax deducted at source should be given to it. It is a settled legal position that when a quasi-judicial authority passes any order, the authority should assign reasons so that the appellate authority or

Court can examine the validity of the order by perusing the reasons assigned by the lower authority. “

The Division Bench also observed that as the petitioner was not heard by the said respondent no.4 before the impugned decision was taken and as no reasons have been recorded for rejection of the application, the order could not be maintained.

4. Taking into consideration the totality of the facts and settled legal position, we are also of the opinion that the order which sans reasons, which is casual in approach and cavalier in conduct, cannot be allowed to stand. We must also observe that when an opportunity of hearing is not afforded by a quasi-judicial authority and in some cases by administrative officer before passing administrative order, which leads to civil consequences, the orders cannot be allowed to stand. The order passed by respondent no.4 contained in Annexure:H (order dated 18.8.2004) for the reasons aforesaid deserve to and is accordingly quashed. Before parting with the case, we must observe that the Assessing Officer, appellate authority or every officer/authority which is subordinate

to the Tribunal, if does not observe the binding judgments of the Tribunal or the High Court, then, they are playing fraud with the risk at their costs and consequences. We must inform that just for nothing they cannot ignore the binding decisions. We must also fore-warn them that some day, their dangerous activities may lend them in trouble and may expose them to the contempt jurisdiction of a competent court.

5. The order rejecting rectification application is quashed. We direct the Assessing Officer/Deputy Commissioner to issue proper notice and give an opportunity of hearing to the petitioner and then pass a speaking order. Rule is made absolute. No costs.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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